

July 7, 2010

Steve Seely

RE: Steve Seely v. Department of Corrections (DOC)  
Allocation Review Request ALLO-10-018

Dear Mr. Seely:

We received your letter requesting a Director's review on April 16, 2010. On April 20, 2010, Karen Wilcox, Director's Review Coordinator, sent a letter to both you and Human Resource Consultant Joanne Harmon addressing the timeliness of your request. In Ms. Harmon's response dated April 30, 2010, she indicated that the determination letter, dated March 15, 2010, was deposited in the U.S. Postal Service on March 16, 2010, and she sent a copy of the USPS Certified Mail Receipt. You responded by stating you received and signed for the certified letter on March 18, 2010. You also stated that your letter requesting a Director's review was received on April 15, 2010, as indicated by your return receipt.

WAC 357-13-080(1) requires employees to request a Director's review within thirty calendar days "of being provided the results of a position review or the notice of reallocation."

WAC 357-04-105(1) provides, in part, the following:

. . . when the civil service rules require an . . . employee . . . to receive notice, **the notice must be provided** by personal delivery, United States mail, or by telephone facsimile transmission **with same-day mailing of copies** unless the specific rule requiring notice allows for alternative methods of providing notice such as electronic mail ("e-mail"), state mail service, commercial parcel delivery or campus mail service (**emphasis added**).

WAC 357-04-105(2) then provides, in part, the following:

. . . **service of notice upon parties will be regarded as completed** when personal delivery has been accomplished; or **upon deposit in the United States mail**, properly stamped and addressed; or upon production

by telephone facsimile transmission of confirmation of transmission. When a specific rule allows alternative methods of service, service upon parties will be regarded as completed when it is actually received by the party to which notice is being provided (**emphasis added**).

In Doering v. Dept. of Social and Health Services, Case No. R-ALLO-08-014 (2008), the Personnel Resources Board (PRB) noted that WAC 357-04-105 “establishes to how notices are to be provided” and “that service upon parties ‘will be regarded as completed . . . upon deposit in the United States mail . . . .’” Therefore, when service of notice is completed through United States mail, the date of service is the date the letter is deposited in the United States mail. This is further supported by prior Board decisions regarding timeliness, including Fadden v. Dept. of Corrections, Case No. R-ALLO-08-005 (2008); Bello v. Dept. of Social and Health Services, Case No. R-ALLO-08-003 (2008); and Dept. of Corrections v. Aikman, Case No. R-ALLO-08-018 (2008).

Although you received the allocation determination letter on March 18, 2010, the date of service was March 16, 2010, as indicated by the postmark on the U.S. Postal Service Certified Mail Receipt. As a result, you were provided (served with) the allocation determination on March 16, 2010. The deadline for requesting review elapsed on April 15, 2010. While Consolidated Mail Services (CMS) in Olympia received your request for a Director’s review on April 15, 2010, WAC 357-49-023(1) states, in part, that “director’s review requests are considered to be filed only when the papers are actually received in the director’s review office in Olympia, Washington.” Since your request was not received in the Director’s Review Office until April 16, 2010, it was untimely. Therefore, the matter is closed.

Either party may appeal the Director’s determination on timeliness to the Personnel Resources Board (board) by filing written exceptions to the Director’s determination in accordance with Chapter 357-52 WAC. Please refer to any Collective Bargaining Agreement regarding appeal rights to the Personnel Resources Board.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director’s determination. The address for the Personnel Resources Board is 600 South Franklin, P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director’s determination becomes final.

Sincerely,

Teresa Parsons, SPHR  
Director’s Review Program Supervisor  
Legal Affairs Division

c: Joanne Harmon, DOC